

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 2008CF009381A
DIVISION W

STATE OF FLORIDA

v.

JEFFREY EPSTEIN,

Defendant.

2009 JUN 25 PM 4:27
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CRIMINAL

EPSTEIN'S MOTION TO STAY DISCLOSURE OF THE NON-PROSECUTION AGREEMENT AND ADDENDUM PENDING REVIEW

Defendant, JEFFREY EPSTEIN ("EPSTEIN"), by and through his undersigned counsel and pursuant to Rule 9.310, Florida Rules of Appellate Procedure, moves to stay disclosure of the Non-Prosecution Agreement and Addendum (collectively, the "NPA") pending review, and states:

1. In the event the Court grants Nonparty [REDACTED] Motion to Vacate Order Sealing Records and Unseal Records, grants Palm Beach Post's Motion to Intervene and Petition for Access and/or denies EPSTEIN's Motion to Make Court Records Confidential, EPSTEIN moves to stay the disclosure of the NPA pending review by the Fourth District Court of Appeals.
2. Rule 9.310(a), Florida Rules of Appellate Procedure, provides in pertinent part, "...a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify or deny such relief."

3. A stay pending review is warranted under the circumstances because of the irreparable harm that would be caused by disclosure of the NPA including, but not limited to, substantial injury to a party by disclosing matters protected by common law and privacy rights, substantial injury to a compelling government interest, substantial injury to innocent third parties and a serious imminent threat to the fair, impartial and orderly administration of justice as set forth in the hearing record date June 25, 2009.

4. In Mariner Health Care of Nashville, Inc. v. Baker, 739 So. 2d 608, 609 (Fla. 1st DCA 1999), defendant Mariner filed a petition for writ of certiorari after the trial court compelled it to produce certain incident reports. Mariner also moved for a stay pending review pursuant to Fla. R. App. Pro. 9.310. The trial court advised the parties that Mariner would be required to submit the incident reports to the court under seal as a prerequisite to a stay. Mariner refused to produce the documents under seal and the trial court denied the motion for stay and imposed daily fines until the documents were produced. Id. The First District Court of Appeals affirmed the trial court's order and noted

Mariner has failed to explain how the production of the reports under seal would result in any prejudice. To the contrary, the records will be protected from disclosure during the entire course of the certiorari proceeding before this court. No harm can be done if this court ultimately determines that the reports are protected by the work product privilege.

Id. at 610.

5. In the instant case the NPA is already filed under seal. Should the Court grant Nonparty [REDACTED] Motion to Vacate Order Sealing Records and Unseal Records, grant Palm Beach Post's Motion to Intervene and Petition for Access and/or deny

EPSTEIN's Motion to Make Court Records Confidential, EPSTEIN requests the Court exercise its discretion under Fla. R. App. Pro. 9.310(a) and enter a stay pending review by the 4th DCA.

6. No harm will be done if the NPA remains under seal pending appellate review. To the contrary, EPSTEIN will suffer irreparable harm if a stay is not entered and the NPA is disclosed to the public.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests that if the Court grants Nonparty [REDACTED] Motion to Vacate Order Sealing Records and Unseal Records, grants Palm Beach Post's Motion to Intervene and Petition for Access and/or denies EPSTEIN's Motion to Make Court Records Confidential, the Court enter a stay pending review and grant any additional relief the Court deems just and proper.

Certificate of Service

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to JEFFREY SLOMAN, ESQ., United States Attorney's Office – Southern District, 500 S. Australian Avenue, Suite 400, West Palm Beach, FL 33401, JUDITH STEVENSON AREO, ESQ., State Attorney's Office – West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401, WILLIAM J. BERGER, ESQ., and BRADLEY J. EDWARDS, Rothstein Rosenfeldt Adler, 401 East Las Olas Boulevard, Suite 1650, Fort Lauderdale, FL 33394, JACK A. GOLDBERGER, ESQ., Atterbury, Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401, SPENCER T. KUVIN, ESQ., Leopold-Kuvin, P.A., 2925 PGA Blvd., Suite 200, Palm Beach Gardens, FL 33410, and DEANNA K. SHULLMAN,

400 North Ashley Drive, Suite 1100, P.O. Box 2602 (33601) Tampa, FL 33602, this 25th
day of June, 2009.

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